Supreme Court, U.S.
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No.

In The

Supreme Court of the United States

October Term, 1996

AREA G HOME AND LANDOWNERS ORGANIZATION, INC. (HALO), DANIEL E. STONE, WARREN OLSON, and and JAMES M. CRAWFORD;

Petitioner,

vs.

ANCHORAGE, A Municipal Corporation,

Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

A. Whether Petitioners, the Residents of a Distinct, Identifiable Geographic Area, Were Denied Equal Protection of the Law Because They Were Denied the Right to a Separate Vote, Unadulterated by Votes of the Residents of the Existing Municipal Police Service Area, on Whether to Join the Service Area, a Right Which Had Previously Been Extended to Them and to the Residents of Every Other Geographic Area Which Had Joined the Service Area.

B. Whether the Ordinance and Actions of the Municipality of Anchorage Constituted an Impermissible Gerrymander in Violation of the Constitution Because the Ordinance and Actions, in Determining Who Could Vote on the Issue of Whether to Include this Geographic Area--the Hillside--in the Service Area Had Both the Intent and the Effect of Negating and 'Fencing Out' the Votes of Hillside Residents on this Issue.

C. Whether By Promising the Residents of the Existing Service Area a Financial Boon (a Decrease in Property Taxes), the Municipality of Anchorage Impermissibly "Bribed" those Voters into Voting to Include the Hillside in the Service Area, in Violation of the Constitution.

LIST OF ALL PARTIES TO THE PROCEEDING, PARENT COMPANIES AND NONWHOLLY OWNED SUBSIDIARIES

The caption of the case contains the names of all the parties.

The only Plaintiff-Petitioner which is not an individual, Area G Home and Landowners Organization, Inc. has no parent companies and no nonwholly owned subsidiaries. The Defendant-Respondent, the Municipality of Anchorage, is a municipal corporation and a political subdivision of the State of Alaska.

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OPINIONS BELOW

The opinion of the Supreme Court of the State of Alaska is reported at 927 P.2d 728 and is reproduced in the Appendix filed herewith ("App.") at 1a.

STATEMENT OF JURISDICTION

On November 22, 1996, the Supreme Court of the State of Alaska issued an opinion affirming the judgment of the Superior Court of the State of Alaska which granted summary judgment to Defendant and dismissed Petitioners' complaint. This Court has jurisdiction under 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS

U.S. Constitution, art. I, § 10

U.S. Constitution, amend. XIV, § 1

The Home Rule Charter of the Municipality of Anchorage art. II, Bill of Rights, § 2

Ordinance of the Municipality of Anchorage, AO No. 96-30(S)

The full text of these provisions are set out in the Appendix.

STATEMENT OF THE CASE

This case involves one of the most fundamental of all constitutional rights--the right to vote. This right is "of special importance" because it "acts to preserve 'other basic civil . . . rights.'" Ball v. James, 451 U.S. 355, 375 (1981), quoting Reynolds v. Sims, 377 U.S. 533, 562 (1964). "Other rights, even the most basic, are illusory if the right to vote is undermined." Wesberry v. Sanders, 376 U.S. 1, 17 (1964). Restrictions on this fundamental right, moreover, "strike at the heart of representative government." Reynolds v. Sims, 377 U.S. at 555.

In this case, that fundamental right was not merely diluted: There was effective disenfranchisement. A dissident, geographic minority of voters were purposefully disenfranchised through a non-racial, nonpartisan municipal gerrymander which denied them any effective voice on the issue as effectively as if the Municipality had thrown their ballots in the trash. The residents of this geographic area--the Hillside--had repeatedly and successfully resisted being included in Anchorage's Police Service Area ("APSA"). Hillside residents had been given a separate vote on the issue exclusive of non-Hillside municipal residents, precisely the same

procedure which had been used in every previous instance when the Municipality of Anchorage ("Municipality") invited a new area to join the APSA. Four times Hillside voters had declined the Municipality's "invitation" to be added to the APSA. The fifth time, in April, 1996, the Municipality brooked no dissent, by redrawing the boundary lines so as to effectively stuff the ballot box: non-residents of the Hillside were permitted to vote on the issue. Outnumbered by approximately 10 to 1, Hillside voters once again soundly rejected the "invitation," but their votes were effectively ignored, not counted, and in fact were overwhelmed by non-Hillside residents who stood to benefit financially from forcing the Hillside to accept the Municipality's "invitation."

The Municipality's actions and its ordinance redrawing election district boundaries to ensure a "Yes" vote on the issue, has denied Petitioners equal protection of the law. Furthermore, the Municipality's action in redrawing the election boundaries--with both the intent and effect of disenfranchising the voters of a distinct geographic area--constituted an unconstitutional gerrymander. Finally, by promising non-Hillside residents that their taxes would be reduced if they added the Hillside to

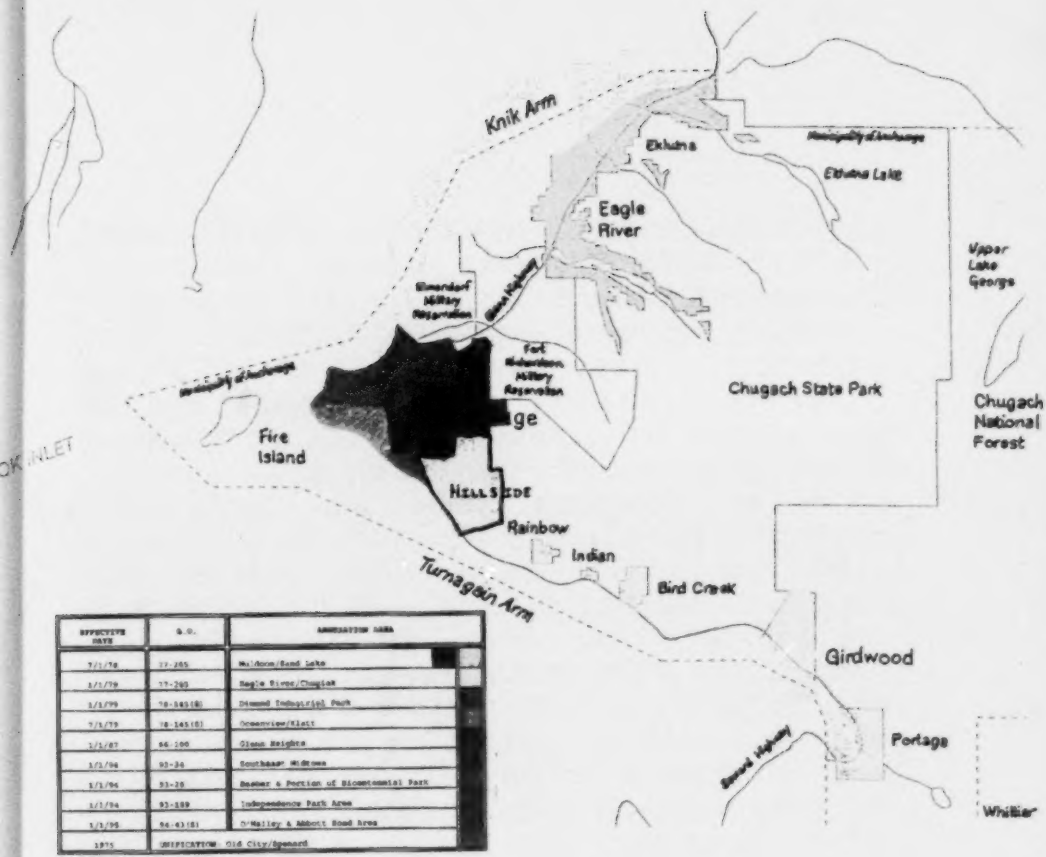
the APSA, the Municipality effectively "bribed" the large majority of voters, in violation of the Constitution.

Area G Home and Landowners Organization, Inc. and other Petitioners ("HALO") therefore respectfully request that the Supreme Court of the United States grant the instant Petition for Writ of Certiorari to review the decision of the Supreme Court of the State of Alaska, which held that these actions and ordinance did not violate the Constitution.

A. Statement of Facts

In 1975, the Municipality, a new home rule municipal government, was created in Anchorage, Alaska, pursuant to adoption of a home rule charter by the electorate. Under the Charter, services, such as police services, were not automatically extended to all parts of the new Municipality. Service areas could only be created, altered, or abolished by a vote of those "within the area affected." Since unification in 1975, the Anchorage Police Service Area ("APSA") has been expanded 10 times.[1/]

[1/]This expansion process is shown in the Illustration on the next page.



EFFECTIVE DATE	A.O.	ANNEXATION AREA
7/1/78	77-265	Mc/Knox/Sand Lake
1/1/79	77-240	Eagle River/Chugiak
1/1/79	78-145(S)	Diamond Industrial Park
7/1/79	78-145(S)	Oceanview/Klatt
1/1/87	86-100	Glenn Heights
1/1/94	93-26	Southeast Wilderness
1/1/94	93-28	Beaver & Portion of Bicentennial Park
1/1/94	93-189	Independence Park Area
1/1/95	94-43(S)	O'Malley & Abbott Road Area
1975	DEFLICATION: Old City/Spenard	

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Added to the APSA were Muldoon/Sand Lake (in 1978), Eagle River/Chugiak (1979), Oceanview/Klatt (1979), Dimond Industrial Park (1979), Glenn Heights (1987), Southeast Midtown (1994), Basher/Independence Park (1994), Bicentennial Park (1994), and Section 16 (1995). On each of these ten prior occasions, an election was held to determine if the area would be added to the APSA. In each election, only residents of the area "invited" to join the APSA could vote on the issue. Residents of the existing APSA could not--and did not--vote. At no time in its history (before April, 1996) had the Municipality ever expanded a service area without a separate, independent vote of the residents within the new area to be served.

The Hillside is a historically identified cohesive geographic area within the boundaries of the Municipality. The Hillside borders on the Chugach Mountains and Chugach State Park to the east, the New Seward Highway on the west, O'Malley Road on the North and McHugh Creek on the south. The area, although primarily residential in nature, is not densely populated. Since unification, residents of the Hillside had been "invited" to join the APSA on four occasions--1977, 1986, 1988 and 1993. On each occasion, like the

residents of Eagle River, the Muldoon Area, etc., Hillside residents had been given the right to vote--separately and independently--on the issue. In each election, no residents of the existing APSA were allowed to vote. In each election, Hillside voters voted against joining the APSA, with an overwhelming margin in the last three elections.

By December, 1995, the Hillside's repeated rejection of police services became intolerable to municipal officials. In January, 1996, the municipal Assembly held a work session to discuss this problem and to consider "creative" ways to hold yet another election, with one difference: this time the election would be structured in such a way as force the Hillside to become part of the APSA regardless of the opposition of its residents. The municipal attorney proposed a clever solution: Let residents of the existing APSA abolish the APSA contingent on passage of a separate ballot proposition creating a New "Improved" APSA, which would include both the existing APSA and the Hillside. The separate proposition creating the New APSA would be voted on by those residing in both the old and new areas voting as a single unit. Since there were 140,585 registered voters in the existing APSA and only 14,230 on the Hillside, a ratio of 10 to 1, and since

APSA residents had been promised a reduction in property taxes[2/], a favorable vote was assured. The second ballot proposition also provided that once Hillside residents were included in the new APSA, they would be liable for all general obligation bonded indebtedness which had been incurred previously by the old APSA.

Thus, even if every registered Hillside voter appeared at the polls and voted against inclusion in the new APSA, the measure would undoubtedly (and in fact did) pass due to the overwhelmingly greater number of voters within the existing APSA who had a direct, financial interest in supporting the measure. To borrow a term from Carrington v. Rash, 380 U.S. 89, 94 (1965), Hillside voters who had voted the "wrong" way four times previously would now be effectively "fenced out" of the electoral process through nothing more than an electoral

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[2/]Residents of the existing PSA were promised an annual reduction in real property taxes, if the Hillside were forced into the APSA, of approximately $40 on a typical $180,000 house. HALO v. Anchorage, 927 P.2d 728, 738 n.9 (Alaska 1996).

"charade."[3/] Municipal officials have openly admitted that the 1996 ballot propositions were purposefully drafted to deny Hillside residents a right of separate vote because in the four prior elections where that right had been extended, Hillside residents kept voting the "wrong" way--i.e., against joining the APSA. In the words of its own lawyer, in fact, the Municipality "does not dispute the fact that it is taking the present step because the Hillside previously voted not to join the [APSA]." App. at 92a.

In the April 1996 election, voters of the existing APSA--not surprisingly--voted to abolish it and to create a new APSA which included the Hillside. Although the Hillside voted by nearly 4 to 1 against being included in the APSA, the record demonstrates that it would have made no difference if 100% of the voters went to polls and voted "No" or 100% simply stayed home. They were overwhelmed by the 10:1 majority in the old APSA. The Municipality had purposefully achieved its intent--to

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[3/]The description aptly given the Municipality's ballot scheme by the Chief Justice of the Alaska Supreme Court, HALO v. Anchorage, 927 P.2d at 743 (Compton, C.J., dissenting).

compel the Hillside to join the APSA. Hillside voters might just as well have stayed home--their votes were not merely diluted, they were rendered meaningless.

Although only a single election was held, it has effectively denied Hillside residents the right to vote on this issue forevermore. Detachment from the APSA is virtually impossible, both practically and legally. Not only would Hillside voters continue to be greatly outnumbered in any subsequent vote on the issue, but a successful effort to detach from the APSA may well impair the security of municipal bondholders, thereby violating the Contract Clause of the U.S. Constitution. See infra.

B. Proceedings Below

In March, 1996, HALO filed an action in state court to enjoin the Municipality from placing the two propositions on the ballot and to have the municipal ordinance creating them declared unlawful and unconstitutional, under both state and federal law. HALO first raised the federal issues in its complaint: Count II of the complaint alleged that the Municipality's actions and the municipal ordinance constituted an unconstitutional gerrymander and denied HALO equal protection of the law, under both the state and federal constitutions. See

App. at 107a - 108a. HALO again raised the federal issues in both in its Motion for Preliminary Injunction and in its Motion for Summary Judgment. See App. at 88a, 94a. The trial court summarily denied HALO's request for relief and dismissed HALO's complaint. See App. at 84a.

HALO appealed the trial court's decision to the Supreme Court of the State of Alaska. HALO raised the federal constitutional issues in its Opening Brief to that court. See App. at 74a. On November 22, 1996, the Alaska Supreme Court concluded that "no person's right to equal protection was violated." HALO v. Anchorage, 927 P.2d 728, 738 (Alaska 1996); App. at 32a. HALO now respectfully seeks a Writ of Certiorari to review that decision.

ARGUMENT

If the Hillside voters who participated in the April, 1996 election had lived in any of the ten other geographic areas of Anchorage which were allowed a separate, independent vote concerning whether or not to join the APSA between 1975 and 1995, they, also, would have received an independent right to vote upon that issue, in which residents of the existing APSA could not participate. Indeed, Hillside residents

were allowed a separate vote on four separate occasions between 1975 and 1995. On the last three--in 1986, 1988 and 1993--they rejected joining the APSA by overwhelming margins. In the April, 1996 gerrymander, residents of this defined geographic area--the Hillside--were denied a right which had been granted to all other residents of Anchorage, similarly situated, on the identical issue, since the Municipality was created. The undisputed record in this case demonstrates, moreover, that the Municipality denied Hillside voters this right for one reason, and one reason only: they voted the "wrong" way four times. The Municipality's response, therefore, was to revoke this right, surely an act of invidious geographic discrimination.

Reynolds v. Sims gives geographic status the same significance as race or economic status:

> Diluting the weight of votes because of place of residence impairs basic constitutional rights under the Fourteenth Amendment just as much as invidious discriminations based upon factors such as race, . . . or economic status . . .

377 U.S. 533, 566 (1964) (citations omitted). This constitutional principle applies to protect a citizen's right to vote not only in federal but in state elections as well. Id. at 554. Furthermore,

> [T]he right of suffrage can be denied by debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of his franchise.

377 U.S. at 555 (footnote omitted). The Court recognized that these constitutional protections are imperative to our political system:

> To the extent that a citizen's right to vote is debased, he is that much less a citizen. The fact that an individual lives here or there is not a legitimate reason for overweighting or diluting the efficacy of his vote. . . . [T]he basic principle of representative government remains, and must remain, unchanged--the weight of a citizen's vote cannot be made to depend on where he lives.

Id., 377 U.S. at 567.

Justice Stevens echoed these observations when he cast the deciding vote in Karcher v. Daggett, 462 U.S. 725 (1983). Justice Stevens wrote that gerrymandering violates the Equal Protection Clause when

> [It] serve[s] no purpose other than to favor one segment--whether racial, ethnic, religious, economic, or political--that may occupy a position of strength at a particular point in time, or to disadvantage a politically weak segment of the community. . . .

462 U.S. at 748 (Stevens, J., concurring). Justice Stevens wrote that the protection of the Equal Protection Clause against vote dilution "cannot be confined to racial groups":

> As long as it proscribes gerrymandering against such groups, its proscription must provide comparable protection for other cognizable groups of voters as well. . . : 'In the line-drawing process, racial, religious, ethnic and economic gerrymanders are all species of political gerrymanders.

Id. at 749 (Stevens, J. concurring) (citation omitted.

In November, 1996, the Alaska Supreme Court concluded that the Anchorage Municipal Charter did not give voters residing in the geographic area to be added to a service area an independent right to vote separately upon that issue. Nevertheless, Hillside voters had a federally protected right to a separate vote, independent of any rights they had under the municipal charter. The Municipality had extended the right to a separate vote to voters in every other geographic area--10 in all--which had previously been "invited" to join the APSA. Indeed, Hillside voters had been given this same right to a separate vote on four prior occasions. That right, once given, cannot be withdrawn arbitrarily:

> [O]nce citizens are granted the right to vote on a matter, the exercise of that vote becomes protected by the Constitution even though the state was not obligated to allow any vote at all.

Hussey v. City of Portland, 64 F.3d 1260, 1263 (9th Cir. 1995), cert. denied, -- U.S. --, 116 S.Ct. 911 (1996). See also Hayward v. Clay, 573 F.2d 187, 190 (4th

Cir. 1978). Moreover, neither a state nor its subdivisions may deny to any person "equal protection of the laws." U.S. Const., amend. XIV, § 1.

This appears to be a case of first impression. It involves a non-racial, non-partisan municipal gerrymander. This writer has found no reported similar case which has been considered by this Court since its decision in Davis v. Bandemer, 478 U.S. 109 (1986). Although of first impression, however, previous decisions of this Court offer substantial guidance on the matter at hand.

Suppose that the Municipality, desirous of exacting $4.4 million annually in APSA taxes from a distinct geographic area, gave the voters of that area four chances to vote on whether to join the APSA. Suppose that those voters, exercising their right to vote separately, exclusive of votes of residents in the existing APSA, overwhelmingly rejected the "invitation" each time. What would the Municipality's options be if it wanted to overcome these unruly, "politically incorrect" voters?

Suppose, hypothetically, that the Municipality could control voter registration. Suppose that the Municipality enacted an ordinance which prohibited all otherwise qualified

persons in the Hillside area from registering to vote on APSA questions. Would this pose a constitutional problem?[4/]

Suppose the Municipality allowed Hillside voters to register, but refused to allow them to cast ballots. Would this pose a constitutional problem?[5/]

Suppose the Municipality allowed Hillside voters to cast ballots but refused to count those ballots. Would this pose a constitutional problem?[6/]

Suppose the Municipality allowed Hillside voters to cast ballots but destroyed or altered those ballots.

[4/]Carrington v. Rash, 380 U.S. 89, 94 (1965) ("'Fencing out' from the franchise a sector of the population because of the way they may vote is constitutionally impermissible.")

[5/]Evans v. Cornman, 398 U.S. 419, 422-23 (1970).

[6/]United States v. Mosley, 238 U.S. 383 (1915).

Would this pose a constitutional problem?[7/]

Suppose the Municipality allowed Hillside residents to vote and counted their ballots, but also stuffed the ballot box with "Yes" ballots of sufficient number to overcome the unacceptable "No" ballots from Hillside voters. Would this pose a constitutional problem?[8/]

Suppose the Municipality, being cost conscious and a good steward of public funds, eliminated the expenses associated with stuffing the ballot box and simply redrew election district boundaries so that the unruly, "politically incorrect" Hillside voters who kept voting "No" were outnumbered 10 to 1 by the "Yes" votes of voters who had been promised a tax break if the Hillside were forced to join the APSA. This would achieve the same result, effectively disenfranchising the unruly, uncooperative minority, at less public expense than stuffing the ballot

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[7/]See United States v. Classic, 313 U.S. 299, 315 (1941); see also Reynolds v. Sims, 377 U.S. at 555.

[8/]Ex Parte Siebold, 100 U.S. 371 (1879); United States v. Saylor, 322 U.S. 385 (1944).

box. Does this pose a constitutional problem? That is the question presented here.

Davis v. Bandemer, 478 U.S. 109 (1986) suggests that such a gerrymander would be unconstitutional. The plurality in Bandemer held that a gerrymander is unconstitutional if two facts are proven: (1) "intentional discrimination against an identifiable political group" and (2) "an actual discriminatory effect upon that group." Id. at 127. The test for "discriminatory effect" is whether

> [T]he electoral system is arranged in a manner that will consistently degrade a voter's or a group of voters' influence on the political process as a whole.

478 U.S. at 132. The "discriminatory effect" must be similar to that imposed upon victims of a racial gerrymander, in that such victims are "essentially shut out of the political process." Id. at 139.

That "discriminatory effect" may be inflicted upon either a majority or upon a minority:

> [A]n equal protection violation may be found only where the

> electoral system substantially disadvantages certain voters in their opportunity to influence the political process effectively. In this context, such a finding of unconstitutionality must be supported by evidence of continued frustration of the will of a majority of voters or effective denial to a minority of voters of a fair chance to influence the political process.

478 U.S. at 133 (emphasis added). The "discriminatory effect" must be proven by "more than a showing of possibly transitory results . . ." Id. at 140.

A common understanding of Bandemer, gained by casual reading, is that "discriminatory effect" may not be shown by the results of one election, that this effect must be shown through a number of elections resulting in the dilution or degradation of a group's vote. But that is not what Bandemer says when the plurality's "single election" discussion is read in context.

Bandemer arose out of an alleged Republican gerrymander of the Indiana State Legislature, the General Assembly, in 1981. To prove discriminatory effect

of the gerrymander, the Democratic plaintiffs relied on only the 1982 election for the Indiana legislature. The district court nonetheless held the redistricting statute was unconstitutional, solely on the basis of one election in which "the percentage of Democrats elected was lower than the percentage of total Democratic votes cast." 478 U.S. at 140. There was no evidence, however, on which to base any reasonable projection concerning the long-term effects of the redistricting.[9/]

The Bandemer's Court primary discussion of "one election"[10/] was wholly in the context of the district

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[9/]Because Indiana is a "swing state," sometimes electing Republican majorities and sometimes Democratic, one legislative election was an insufficient basis for any long term projection of "discriminatory effect" upon either political party. 478 U.S. at 135.

[10/]The Bandemer's plurality's other comment concerning "one election" came in the context of its rejecting the district court's ruling that plaintiffs were entitled to "proportional representation": [A] mere lack of proportionate results in one election cannot suffice. . . ." 478 U.S. at 139.

court's findings, based solely on the results of one election, concerning the long-term effects the gerrymander would have on Indiana Democratic State legislators:

> Relying on a single election to prove unconstitutional discrimination is unsatisfactory. . . . The District Court did not find that . . . the Democrats could not in one of the next few elections secure a sufficient vote to take control of the assembly. Indeed the District Court declined to hold that the 1982 election results were the predictable consequences of the 1981 Act and expressly refused to hold that those results were a reliable prediction of future ones.

478 U.S. at 135. Thus, "mere lack of control . . . after a single election does not rise to the requisite level." Id. at 140.

Apparently this discussion has given rise to a common belief that unconstitutional "discriminatory effect" in a non-racial gerrymander case can never be shown by the results of one election. Footnote 17 of Bandemer,

however, sets the record straight and proves the common understanding wrong:

> [W]e believe that Justice Powell incorrectly asserts that more than one election must pass before a successful racial or political gerrymandering claim may be brought . . . Projected election results based on district boundaries and past voting patterns may certainly support this type of claim, even where no election has yet been held under the challenged districting.

278 U.S. at 140 n.17 (citations omitted) (emphasis added).

According to the Bandemer plurality, therefore, "projected" results of the consequences of one election can be sufficient proof of unconstitutional "discriminatory effect" in a non-racial gerrymander case. Just such a projection is not merely possible in the present case, but assured. Hillside voters have essentially been "shut out" of the political process concerning whether they would or would not be included in the APSA. Because of the gerrymander, in which they were--and will continue to be--outnumbered 10 to 1 by residents of the old APSA who have a financial interest in

keeping the Hillside in the New APSA, Hillside voters are, were and will be effectively disenfranchised on this issue. In future elections on this issue, just as in the April, 1996 election, it will make no difference whether every registered Hillside voter stays home or goes to the polls -- their votes will be completely overwhelmed by the far more numerous voters of the old APSA. Thus, the influence of Hillside voters in the political process has been permanently "degraded" by the gerrymander, resulting effectively in total disenfranchisement. It can be safely projected that the gerrymander "will consistently degrade" Hillside voters' "influence on the political process" relating to this issue and that, having been forced into the New APSA, Hillside voters will be never be able to escape from it.

The second ballot proposition, which forced the Hillside into the New APSA, also provided that, upon entry, Hillside residents would be liable for all general obligation bonded indebtedness of the old APSA. While general obligation bonded indebtedness is secured by the full faith and credit of the Municipality, taxes to pay debt service are only levied upon service area residents. Since all property within the New APSA serves as security for the bonds, and since 17% of

assessed residential valuation of the entire Municipality lies in the Hillside, any attempt by the Hillside to escape the New APSA may well be blocked by the Contract Clause of the U.S. Constitution, which provides: "No state shall . . . pass any . . . law impairing the obligation of contracts." U.S. Const. art. I, § 10. Detachment of a significant segment of taxable property from the New APSA may well impair the security of bondholders. See, e.g., Canal Nat'l Bank v. School Administration Dist., 203 A.2d 734 (Maine 1964); Trypack v. Daniels, 874 P.2d 1374 (Wash. 1994); see also Port of Mobile v. Watson, 116 U.S. 289 (1886) and United States Trust Co. v. New Jersey, 431 U.S. 1 (1977).

The predictable, probable irreversibility of the results of the April, 1996 gerrymander, meets Bandemer's test that the political gerrymander is unconstitutional, because its long term effect "will consistently degrade a voter's or group of voters' influence on the political process as a whole." 478 U.S. at 132. In this case, the entire history and process surrounding the inclusion of the Hillside in the New APSA constitutes the "political process as a whole." There has unquestionably been an "effective denial to a minority of voters of a fair chance to influence the political process." Id. at 133. Thus,

Bandemer's test for "discriminatory effect" is satisfied in this instance, even though only one election has occurred.

This is particularly true when residents of the old APSA, who outnumbered Hillside voters 10 to 1, were promised that each household would receive a tax savings of approximately $40 per year if the Hillside were forced to join the New APSA. The only two reported decisions which this writer could find on this subject strongly suggest that a municipality's offering of such a financial incentive is an unconstitutional infringement upon the right to vote. See Hussey v. City of Portland, 64 F.3d 1260, cert. denied, -- U.S. --, 116 S.Ct. 911 (1996) and Town of Fond du Lac v. City of Fond du Lac, 126 N.W.2d (Wis. 1964).

In Hussey, the City of Portland enacted an ordinance providing a substantial sewer connection subsidy to landowners who irrevocably consented to annexation of their property to the City as electors. 64 F.3d 1260. The Ninth Circuit found that the "bribe" was "an unconstitutional infringement on the fundamental right to vote," which subverted "the process through which citizens consent to be governed." Id. at 1266. According to the court, the

inducement could not pass constitutional muster because it was "designed to distort the political process. . . ." Id.

The Fond du Lac court came to the same conclusion. 126 N.W.2d 201. There, the City induced two voters to sign an annexation petition in exchange for a year's free rent and told two others that they would be evicted if they failed to sign. The Wisconsin Supreme Court found that such economic incentives to voters were unconstitutional, an infringement upon the right to vote:

> . . . [T]he use of economic pressure by the defendant-city interested in the outcome of the annexation to obtain favorable signatures of the necessary electors in this case is a shocking disregard of the political process of government. The city's action was the equivalent of buying votes and improper.

Id. at 204. Likewise, here, by offering voters in the old APSA a tax reduction, the Municipality's actions were the equivalent of "buying votes" and thus unconstitutional.

The record in this case is clear and undisputed: the intent of the gerrymander was to deprive "politically incorrect" voters in a distinct geographic area, who kept voting the "wrong" way, of any meaningful voice in determining whether to join the New APSA. The record conclusively demonstrates, moreover, that this intent was perfectly achieved: the effect of the gerrymander was total disenfranchisement of the voters in that area. Accordingly, Bandemer's two-part test to establish an unconstitutional gerrymander is satisfied here.

Let us return to the Questions posed previously. The intent and the effect of the gerrymander produced precisely the same result as if:

The Municipality had prohibited all qualified persons in the Hillside from registering to vote on APSA questions.

The Municipality had allowed Hillside voters to register, but did not allow them to cast ballots.

The Municipality had allowed Hillside voters to cast ballots, but refused to count them.

The Municipality had allowed Hillside voters to cast ballots, but altered or destroyed them.

The Municipality had allowed Hillside residents to vote and counted their ballots, but also stuffed the ballot box so that ballots making the "wrong" choice from Hillside voters were outnumbered by ballots making the "right" choice.

If the Equal Protection Clause of the Constitution would prohibit the Municipality from barring voters from "politically incorrect" geographic areas from registering to vote, would prevent it from forbidding them to vote if registered, would require it to count their ballots, would not allow it to destroy or alter those ballots, and would not allow it to stuff the ballot box, should the Municipality be permitted to circumvent these constitutional prohibitions and to achieve precisely the same result by consciously redrawing boundaries of an electoral district with both the intention and result of disenfranchising the unruly voters, solely because those voters kept voting the "wrong" way?

This question is too important to be left unanswered by this Court.

CONCLUSION

For the reasons stated the Petition for a Writ of Certiorari should be granted.

Respectfully submitted this 20th day of February, 1997.

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